

Filed for intro on 02/05/2001

HOUSE BILL 591
By Chumney

AN ACT to amend Tennessee Code Annotated, Title 37, Chapter 5; Title 62, Chapter 21 and Title 71, Chapter 3, relative to Tennessee Child Care Centers Pest Management Act.

WHEREAS, Pesticides contain toxic substances, many of which may have a detrimental effect on human health and the environment and, in particular, have developmental effects on children;

WHEREAS, the general assembly recognizes the need to reduce pesticide use in child care agencies and child caring institutions;

WHEREAS, Pests are best controlled through an integrated pest management program that combines preventive techniques, non-chemical pest control methods, and the appropriate use of pesticides with preference for products that are the least toxic to human health;

WHEREAS, Tennessee's public welfare will benefit from adopting integrated pest management statewide in Tennessee child care facilities; and

WHEREAS, the general assembly supports the use of an integrated pest management system by child care agencies and child caring institutions; now, therefore

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 62, Chapter 21, is amended by adding the following sections 2-14 as a new appropriately designated part:

SECTION 2. As used in this act, unless the context otherwise requires:

(1) "Anti-microbial pesticide" or "anti-microbial" means a pesticide that is used for the control of microbial pests, including, but not limited to, viruses, bacteria, algae and protozoa, and is intended to disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms. Anti-microbial pesticides shall not include any fungicide or pesticide used on plants, turf or other vegetation or for ornamental uses.

(2) "Child care agency" or "agency" means an entity or person as defined in Tennessee Code Annotated, Title 37, Chapter 5, Part 501(b)(5);

(3) "Child caring institution" or "institution" means an entity or person as defined in Tennessee Code Annotated, Title 37, Chapter 5, Part 501(b)(6);

(4) "Department" means the department of children's services.

(5) "Integrated pest management" means a managed pest control program that eliminates or mitigates economic and health damage caused by pests, minimizes the use of pesticides and the risk to human health and the environment associated with chemical pesticide applications, and uses:

(a) Integrated methods;

(b) Site or pest inspections;

(c) Pest population monitoring;

(d) An evaluation of the need for pest control; and,

(e) One or more pest control methods, including sanitation, structural repairs, mechanical and biological controls, other non-chemical methods, and, if nontoxic options are unreasonable and have been exhausted, the least toxic pesticide.

(6) "Least toxic pesticide" includes boric acid and disodium octoborate tetrahydrate; silica gels; diatomaceous earth; nonvolatile insect and rodent baits in

tamper resistant containers for crack and crevice treatment only; microbe-based insecticides; biological, living control agents; pesticides containing essential oils, not including synthetic pyrethrins or toxic synergists; materials for which the inert ingredients are nontoxic and disclosed; and least toxic pesticides that qualify as exempt from the EPA (See 40 CFR, Part 152 and Federal Register March 6, 1996, page 8870.). Least toxic pesticide does not include a pesticide that: is determined by the U.S.

Environmental Protection Agency as probable, likely, or known carcinogen or endocrine disruptor; is a mutagen, reproductive toxin, developmental neurotoxin, or immune system toxin; is classified by the U.S. Environmental Protection Agency as a toxicity I or II pesticide; is in the organophosphate or carbamate chemical family; or contains inert ingredients categorized as "List 1: Inerts of Toxicological Concern." Least toxic pesticide does not include any application of pesticide using tenting, fogging, or baseboard spray application.

(7) "Pesticide" means any substance or mixture of substances, including herbicides and bait stations, intended for preventing, destroying, repelling, or mitigating any pest; use as a plant regulator, defoliants, or desiccant; or use as a spray adjuvant such as a wetting agent or adhesive. Pesticide does not include: an anti-microbial agent, such as a disinfectant, sanitizer, or deodorizer, used for cleaning purposes.

(8) "The University of Tennessee Cooperative Extension Service School IPM Program" or "program" means guidelines for integrated pest management programs for indoor and outdoor pest control practice at public agency or institution buildings and the approved list of least toxic pesticides and pest control products. This list includes, but is not necessarily limited to: any "least toxic pesticide" which includes boric acid and disodium octoborate tetrahydrate; silica gels; diatomaceous earth; nonvolatile insect and rodent baits in tamper resistant containers or for crack and crevice treatment only; microbe-based insecticides; biological, living control agents; pesticides containing

essential oils, not including synthetic pyrethrins or toxic synergists; materials for which the inert ingredients are nontoxic and disclosed; and least toxic pesticides that qualify as exempt from the EPA (See 40 CFR Part 152 and Federal Register March 6, 1996, page 8870).

SECTION 3. Every agency and institution shall develop and implement an integrated pest management program incorporating the guidelines developed by the University of Tennessee Cooperative Extension Service School IPM Program.

SECTION 4. The department shall promote the use of the program and other efforts that will operate to reduce or eliminate, whenever possible, the exposure of children in agencies and institutions to chemical pesticides. The department shall submit an annual report to the general assembly describing the efforts taken and the progress made toward reducing pesticide use in child care agencies and child caring institutions.

SECTION 5. The department shall appoint a contact person to assume responsibility for reporting to the general assembly, oversight of pest management practices and record keeping requirements.

SECTION 6. To receive an exemption from implementing the program, an agency or institution shall present to the department, a finding demonstrating the economic burden of implementing the program.

SECTION 7. Pesticides shall not be sprayed, released, deposited or applied indoors while children are on the property of or located in an agency or institution, except for the following pesticides:

SECTION 8. Not less than seventy-two (72) hours before a pesticide, other than a least toxic pesticide or anti-microbial is applied in an agency or institution or on the grounds of an agency or institution, the agency or institution shall provide, to each parent and guardian of each enrolled child and each staff member of the agency or institution, notice that includes:

(1) The common name, trade name, and U.S. Environmental Protection Agency registration number of the pesticide;

(2) A description of the location of the application of the pesticide;

(3) A description of the date and time of application, except that, in the case of outdoor pesticide applications, each notice shall include three dates, in chronological order, that the outdoor pesticide applications may take place if the preceding date is canceled;

(4) The statement that "The Office of Pesticide Programs of the U.S. Environmental Protection Agency has stated: "Where possible, persons who potentially are sensitive, such as pregnant women and infants (less than two years old), should avoid any unnecessary pesticide exposure";

(5) A description of potential adverse effects of the pesticide based on the material safety data sheet of the pesticide;

(6) A description of the reasons for the application of the pesticide;

(7) The name and telephone number of the contact person of the agency or institution; and

(8) Any additional warning information related to the pesticide.

SECTION 9. (a) Notice shall be provided to the parents or guardians of children enrolled in the agency or institution and the staff, by one or more of the following means:

(1) Written notice sent home with the child and provided to staff;

(2) A telephone call;

(3) Direct contact; or

(4) Written notice mailed at least one (1) week before the application.

(b) If the date of the application of the pesticide needs to be extended beyond the period required for notice under this section, the agency or institution shall reissue the notice under this section for the new date of application.

SECTION 10. The notice provisions shall apply at all times except during periods when the agency or institution shall be closed for at least five consecutive days after the spraying, release, deposit or application.

SECTION 11. At least seventy-two (72) hours before an agency or institution uses a pesticide, other than a least toxic pesticide or an anti-microbial, the agency or institution shall post notice signs in a prominent place that is in or adjacent to the location to be treated and at each entrance to the building or grounds to be treated. The sign shall remain posted for at least seventy-two (72) hours after the end of the treatment and be of uniform design with a symbol people who cannot read can understand.

SECTION 12. (a) If a director or supervisor of an agency or institution determines that a human health emergency warrants the use of a pesticide not otherwise allowed under this chapter, or warrants its use sooner than two days after providing the required standard written notification, the director or supervisor may apply for a single-use waiver from the appropriate municipal board of health.

(b) The municipal board shall make a determination within twenty-four hours of the waiver application as to whether the waiver shall be granted based upon the following criteria:

- (1) whether the pest situation poses an immediate threat to human health; and
- (2) whether no viable alternatives to the use of chemical pesticides exist.

(c) Not later than the earlier of the time that is twenty-four (24) hours after an agency or institution applies a pesticide under this section or on the morning of the next day the agency or institution is open, the agency or institution shall provide to the municipal board of health, to each parent or guardian of children enrolled and to staff members of the agency, notice of the application of the pesticide for emergency pest control that includes:

- (1) The information required for a notice under Section 8 of this act;
- (2) A description of the problem and the factors that qualified the problem as an emergency that threatened the health or safety of a child or staff member; and

(3) A description of the steps the agency or institution will take in the future to avoid emergency application of a pesticide under this section.

(d) An agency or institution applying a pesticide under this section shall post a sign warning of the pesticide application at the time of the pesticide application;

(e) If an agency or institution applies a pesticide under this section, the agency or institution shall modify the integrated pest management plan to minimize the future applications of pesticides under this section.

SECTION 13. Pesticides shall not be stored in agency facilities where children are present.

SECTION 14. (a) For purposes of this section, universal notification shall be required for all pest control methods and products. Pesticides subject to notification requirements shall not include anti-microbials or any product on the approved list of least toxic pesticides. Universal notification shall be accomplished in the following manner:

(1) Each agency or institution district shall include a notice of their integrated pest management system in agency or institution calendars or other forms of universal notification;

(2) Each agency or institution shall notify all new staff members and parents or guardians of children newly enrolled in the agency or institution;

(3) If new products or pesticides are added to the list of products that may be used by the agency or institution district, each agency or institution shall include a revised list including all new products to be used in the integrated pest management system to parents, guardians, staff and the department.

SECTION 15. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2001, the public welfare requiring it.